

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

KENNETH CAMPBELL V. STATE OF TENNESSEE

**Appeal from the Criminal Court for Davidson County
No. 91-S-831 J. Randall Wyatt, Jr., Judge**

No. M2005-02895-CCA-R3-PC - Filed April 20, 2006

This matter is before the Court upon the State's motion to affirm the judgment of the post-conviction court by memorandum opinion pursuant to Rule 20, Rules of the Court of Criminal Appeals. The petitioner has appealed the post-conviction court's order summarily dismissing the petition for post-conviction relief. In that petition, the petitioner alleges that the State suppressed exculpatory evidence, presented false testimony and obtained convictions using this false evidence. Upon a review of the record in this case we are persuaded that the post-conviction court was correct in summarily dismissing the petition for post-conviction relief and that this case meets the criteria for affirmance pursuant to Rule 20, Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted, and the judgment of the post-conviction court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES, and ROBERT W. WEDEMEYER, JJ., joined.

Kenneth Campbell, Pro Se, Pikeville, Tennessee.

Paul G. Summers, Attorney General & Reporter; Benjamin A. Ball, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

In 1991, the petitioner was convicted by a jury of first degree murder and theft of property. He received an effective life sentence for his convictions. State v. Kenneth Campbell, No. 01C01-9206-CR-00189, 1993 WL 86936 (Tenn. Crim. App., at Nashville, Mar. 25, 1993), perm. app. denied, (Tenn. Jul. 6, 1993). On direct appeal, this Court affirmed the petitioner's convictions and sentence. Id. at *1. The petitioner subsequently filed a petition for post-conviction relief in which he challenged the jury instructions at trial. This Court affirmed the post-conviction court's denial

of that petition . Kenneth Campbell v. State, No. 01C01-9409-00321, 1995 WL 328862 (Tenn. Crim. App., at Nashville, Jun. 1, 1995).

On May 21, 2003, the petitioner again filed a petition for post-conviction relief. The second petition sought DNA testing. Again, this Court affirmed the post-conviction court's denial of the petition. Kenneth I. Campbell v. State, No. M2004-00589-CCA-R3-PC, 2004 WL 467161 (Tenn. Crim. App., at Nashville, Feb. 22, 2005), perm. app. denied, (Tenn. Oct. 10, 2005).

On November 1, 2005, the petitioner filed a third petition for post-conviction relief, alleging that the State suppressed exculpatory evidence, presented false testimony and obtained convictions using this false evidence. The post-conviction court dismissed the petition without a hearing after finding that the petition was barred by the statute of limitations and failed to meet any of the statutorily recognized exceptions. The petitioner filed a timely notice of appeal.

Analysis

The post-conviction court stated the following in its order:

The Court finds that the Petition was filed approximately thirteen and a half years after the final action of the highest state appellate court. The Court finds that the Petition is time barred by the applicable one year statute of limitations, and fails to meet any of the statutorily recognized exceptions to the statute of limitations. The Court also finds that the Petitioner has previously filed both a Petition for Post-Conviction Relief, and a Petition for Post-Conviction Relief requesting DNA testing, which were resolved on the merits by a court of competent jurisdiction. It is therefore the opinion of the Court, that the Petitioner's pro se petition for Post-Conviction Relief should be dismissed.

Since July 1, 1995, the statute of limitations for filing a petition for post-conviction relief has been one year from the date of the final action of the highest state appellate court to which an appeal is taken. Tenn. Code Ann. § 40-30-202(a). There are three statutory exceptions to the statute of limitations in post-conviction matters. These exceptions are set forth in Tennessee Code Annotated section 40-30-202(b)(1), (2) & (3): (1) claims based on an appellate court ruling concerning a constitutional right not recognized at the time of the trial and given retroactive effect by the appellate courts; (2) claims based upon newly discovered evidence which establishes that the petitioner is actually innocent of the crime; and (3) claims which arise out of a situation where the petitioner received an enhanced sentence for a crime based on previous convictions which were later held to be invalid. The petitioner has not alleged that any of these exceptions applies to his case. Thus, we agree with the post-conviction court that the petition is time-barred.

Rule 20, Rules of the Court of Criminal Appeals provides inter alia:

The Court, with the concurrence of all judges participating in the case, when an opinion would have no precedential value, may affirm the judgment or action of the trial court by memorandum opinion rather than by formal opinion, when:

The judgment is rendered or the action taken in a proceeding before the trial judge without a jury, and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge

We determine that this case meets the criteria of the above-quoted rule and, therefore, we grant the State's motion filed under Rule 20 and we affirm the judgment of the trial court.

JERRY L. SMITH, JUDGE